IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.211 OF 2006
WITH
CIVIL APPLICATION NO.442 OF 2006

Uttaranchal Seva Samitee & Anr. ..Appellants.

V/s.

Municipal Corpn. of Gr.Mumbai & Ors. ..Respondents.

Mr.R.R.Mishra & M.B.Jadhav appellants.

Mrs. Geeta Joglekar for BMC.

Mr.M.S.Prasad for respondent No.2.

Mr.S.G.Surana for respondent No.3.

Mr.A.R.Patil, AGP for respondent No.4.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 23, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record including the order passed by the lower Court which is impugned in this appeal.

2. The impugned order is passed at ad-interim stage in Notice of Motion No.3181 of 2005. The operative order reads thus:

"ORDER

"1. The Court Receiver, High Court Bombay

is appointed as the Receiver under Order 40, Rule 1 of Cr.P.C. in respect of 14 structures, in occupation of the persons named in the notice dated 12.12.2005.

2. The Court Receiver shall take possession of those 14 structures/occupants and put them into the temporary accommodation provided by the defendant nos.3 and 4 within 15 days from today.

3. So far as permanent accommodation of these 26 persons are concerned, six persons are already entitled for permanent accommodation, as agreed by the defendant nos.3 and 4 and their names are appearing in Annexure-II. So far as 20 remaining occupants are concerned, out of 26 occupants, Ld. Adv. Mr.Dhanuka will be free to submit appropriate documents before the Competent Authority for consideration of their eligibility under Slum Act, within two weeks from today.

4. The Competent Authority shall decide the claim of those remaining 20 persons, within two months from the date of this order and shall communicate heir decision to those 20 applicants.

5. On providing temporary accommodation to 14 occupants mentioned in the notice dated 12.12.2005, the Court Receiver, High Court, Bombay with the help of defendant nos.3 and 4 shall demolish the existing structures within one week of handing over the possession of those structures by 14 occupants.

6. The costs of the Court Receiver shall be borne by the Plaintiffs alone.

7. The temporary accommodation required to be provided to those 14 occupants, as named herein above, in the notice dated 12.12.2005, shall be in accordance with the Sra guidelines/rules.

8. In view of this order, the obstruction notice, dated 12.12.2005 shall stand vacated. Hearing before Add. Collector is closed.

9. Adjourned to 20.2.2006 for final hearing of the N/M and Chamber Summons."

3. The first grievance of the appellant is that the Court below has completely overlooked that the appellant has no causal connection with the proposed redevelopment scheme. There is no agreement with the appellant committee. The land on which structure occupied by the members of the appellant is situated at the different location altogether. On this basis, it is contended that the question of appointing Court Receiver with regard to the disputed structure was wholly unwarranted.

4. I see no substance in this appeal. In so far as grievance of the appellant that the structure occupied by the members of the appellant is situated at different location and has no connection with the proposed scheme is concerned, the counsel for the appellant was called upon to point out relevant averments in the pleadings in support of this submission. He has firstly relied upon the averments in the plaint in paragraph-9 thereof, which reads thus:

"9. The Plaintiffs states that the

> Defendant No.2, is a proposed society, formed by different chawl committee on the suit plot of land and having several members also occupying their respective structures on the suit plot of land. The Defendant No.3 and 4 might have represented the Defendant No.2 and developing the suit plot of land under S.R.A.Scheme, the Plaintiffs further states that they are not the member of the Defendant No.2 and the Defendant No.3 and 4 is not represents any of the members of the Plaintiff No.1 neither consented the Defendant No.3 and 4. For the development of their property being their respective structures occupied by them on the suit plot of land nor the Defendant Nos. 3 & 4 have ever entered into an agreement of any nature whatsoever with the present members of the Plaintiff No.1. The Plaintiff apprehend in the guise of development under S.R.A. Scheme of the Defendant No.2, the Defendant Nos.3 & 4 may take law in their own hand and may demolish the respective structures of the Plaintiff No.1."

5. Reliance is also placed on the assertion made in the proposed amendment moved by way of Chamber Summons in clause (b) of the schedule. It is averred as follows:

> "This from the said two plans it is clear that the Plaintiffs society is situated at difference place."

Even if the above averments are read liberally, it can only indicate that the appellant is a separate committee of occupants. The members of the appellant committee and the members of the defendant No.2 proposed society form a different chawl Committee.

Even so, the fact remains that the disputed structures are situated on the land bearing Survey No.41 which is subject to Slum Redevelopment Scheme. The members of the proposed defendant No.2 society are original occupants of the structure situated on the same plot. The overwhelming majority of the occupants are in favour of Slum Redevelopment Scheme. If it is so, minority of members cannot be heard to interdict the redevelopment process. Suffice it to observe that the argument that the appellant consists of occupants whose structure situates at different places makes no difference for the simple reason that the structure occupied by the members of the appellant nevertheless are at Plot bearing Survey No.41. There is no averments in the plaint that the structure occupied by the members of the appellant committee are situated on plot other than the plot bearing survey No.41. If so, the argument which is canvassed across the bar will be of no avail to the appellant.

6. The next argument pressed into service on behalf of the appellant is on the basis of order passed by the Division Bench of this court on 10th November, 1997 in Writ Petition No.653 of 1997. The said Writ Petition was filed by the appellant

committee against the Municipal Corporation, in which following order came to be passed:

"MINUTES OF ORDER

1. The 24 Petitioners have yet to be given the alternate pitches at Anand Nagar. In Anand Nagar, there are vast number of hutments which have been constructed and are located in such a way that no proper demarcation can be made and pitches can be allotted in order to enable the Respondents to accommodate the Petitioners.

2. In Anand Nagar, there are hutments dwellers whose structures are existing prior to 1.1.1995 and hence the Respondents cannot take action against the hutment dwellers due to the policy of the Government as a result, the remaining 24 Petitioners could not be allotted with the pitches.

3. These Respondents shall, therefore, conduct a survey of the entire Anand Nagar showing thereby the list of persons who are protected by the orders of Court. The Respondents shall also maintained the list of the hutment dwellers whose structures are existing prior to 1.1.1995 and also of the persons who have built the structures after 1.1.1995 taking into consideration the relevant documents such as Electro Roll of 1995, proving the existence of the structures.

4. After taking the survey of the entire Anand Nagar and after preparing the list of the persons eligible, the Respondents shall properly demarcate the pitches which are to be allotted to the balance petitioners within 8 weeks from today.

5. Petition to stand disposed of accordingly."

On the basis of this order, it is contended that the

proposed scheme of redevelopment is in contravention of the assurance given before this court as recorded in this order. This argument does not commend to me. The modality noted in the order dated 10th November, 1997 was on the premiss that hutment dwellers should be allotted pitches. That was a different scheme applicable at the relevant point of time. With the passage of time however, plot bearing Survey No.41 which has been declared as slum area was required to be redeveloped, for which redevelopment scheme has now been conceived and put in action and with this changed situation the requirement under order dated 10th November, 1997 will have to be considered as worked out by itself. In other words, now the plot bearing Survey No.41 will have to be governed by the Slum Redevelopment Scheme already formalised and is being translated by constructing four buildings. From amongst the four buildings, original hutment dwellers on the said plot bearing survey No.41 will be rehabilitated in appropriate tenement. In the circumstances, arrangement directed by the trial Court in the impugned order, in my opinion, is the appropriate arrangement to be observed by the authorities. In that sense no interference against the impugned order is warranted. This appeal should therefore, fail.

7. At this stage, counsel for the appellant submits that there are some left out occupants whose claim will have to be considered by the authority. It will be open to all the affected persons to apply to the competent authority and substantiate their claim for being eligible for alternate accommodation, in lieu of the structure occupied by them. If the authority, on analysing all relevant documents placed before it, takes the view that such person is eligible for alternate accommodation, the builder will be obliged to provide suitable tenement to such person, as may be directed by the authorities. These aspects are kept open.

8. It is clarified that besides person referred to in the impugned order, even other affected persons may be free to apply to the authority within two week from today and substantiate their claim for allotment of suitable tenement in the proposed building to be constructed under Slum Redevelopment Scheme. The authority may consider those claims on its own merits in accordance with the law.

9. It is also made clear that the observation made in this order or for that matter the impugned

order shall not affect the suit pending before the lower Court.

10. At this stage, counsel for the appellant prays that the operation of this order passed by the trial Court may not be given effect to for some reasonable time to facilitate the appellant to take up the matter before the Apex Court. As the request made is reasonable, it is ordered that status quo as of today be maintained by the parties with regard to the suit property for a period of three weeks from today.

11. Appeal as well civil application disposed of accordingly.